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gLAWcal
Comment #327

TRIPS IN BIOTECH

Based on

Jianqiang Nie “The Relationship between the TRIPs Agreement and the Convention on Biological Diversity (CBD): Intellectual Property and Genetic Resources, Traditional Knowledge and Folk Protection from a Chinese Perspective”



A gLAWcal comment on Jianqiang Nie “The Relationship between the TRIPs Agreement and the Convention on Biological Diversity (CBD): Intellectual Property and Genetic Resources, Traditional Knowledge and Folk Protection from a Chinese Perspective” in Paolo Davide Farah and Elena Cima (Eds.) *China’s Influence on Non-Trade Concerns in International Economic Law*

The intersection of TRIPS agreements and biotech is a novel complication for regulators and policymakers. TRIPS gives the participating nations quite a bit of leeway in ensuring that there is uniform international agreement on a topic, but also provides discretion in creating greater or lesser standards when it would be make more sense for that nation to do so. Patents are an especially difficult scenario to have across the board agreement on what is and is not allowed, but there is still room to create a minimum set of standards that all nations must abide by. As the author notes, it is certainly best to leave individual patent decisions to the domestic government agencies and judicial officials to determine if a pat-

ent application should be approved or not. However there are circumstances where it would make little sense to allow developing nations without a robust judiciary to make these determinations. It is suggested in the text that this provision of the TRIPS agreement should be repealed or amended to recognize that patent application administration should be done with a great degree of knowledge on the subject. In certain circumstances the whole of the international community should be the vested authority on the regulation in an industrial area.

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The gLAWcal comments are insight and short analytical pieces written by the gLAWcal team. The gLAWcal comments are based on, and inspired by, the books and chapters published within one of the [gLAWcal book series](#) published by Routledge Publishing (New York/London).

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